

AMENDED IN ASSEMBLY APRIL 27, 2015

AMENDED IN ASSEMBLY APRIL 20, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1267

Introduced by Assembly Member Bloom

February 27, 2015

An act to amend Sections 765.030, 765.040, and 765.060 of, to repeal and add Section 765.010 of, the Code of Civil Procedure, to add Sections 27212, 27282.5, and 27292 to, and to repeal Section 6223 of, of the Government Code, relating to lawsuits, liens, and other encumbrances.

LEGISLATIVE COUNSEL'S DIGEST

AB 1267, as amended, Bloom. Lawsuits, liens, and other encumbrances.

~~(1) Existing~~

Existing law prohibits a person from filing or recording a lawsuit, lien, or other encumbrance, pertaining to actions arising in the course and scope of the duties of a public officer or employee, against a public officer or employee, knowing that it is false, with the intent to harass the officer or employee or to influence or hinder the public officer or employee in discharging his or her official duties. Existing law also provides that a person who records or files a lawsuit, lien, or encumbrance against a public officer or employee in violation of this prohibition, as specified, is liable for a civil penalty not to exceed \$5000. Existing law requires a court to issue an order striking and releasing a lien or other encumbrance against a public officer or official in violation of this prohibition, and it allows a court to award costs and reasonable attorney fees in that instance.

Existing law permits a public officer or employee whose property is subject to a lien or other encumbrance in violation of this prohibition to petition the superior court of the county in which the person resides or in which the property is located for an order directing the lien or other encumbrance claimant to appear at a hearing before the court and show cause why the lien or other encumbrance should not be stricken and other relief should not be granted.

This bill would repeal and recast these provisions and instead prohibit a person from filing or recording, or directing another to file or record, a lawsuit, lien, or other encumbrance against any person or entity, knowing that it is false, with the intent to harass the person or entity or to influence or hinder the person in discharging his or her official duties if the person is a public officer or employee. The bill would also provide that a person who files a lawsuit, lien, or other encumbrance against any person or entity in violation of this prohibition is liable for a civil penalty not to exceed \$5000.

This bill would allow any person or entity subject to a lien or other encumbrance in violation of its prohibitions to petition the superior court of the county in which the person or entity resides or in which the property is located for an order directing the lien or other encumbrance claimant to appear at a hearing before the court and show cause why the lien or other encumbrance should not be stricken and other relief should not be granted. The bill would expand the requirement for a court to issue an order striking and releasing a lien or other encumbrance to apply to a lawsuit, lien, or other encumbrance against any person or entity. The bill would also make other conforming changes.

~~(2) Existing law, upon payment of proper fees and taxes, requires a county recorder to accept for recordation any instrument, paper, or notice that is authorized or required by statute, or court order to be recorded, or authorized or required to be recorded by a local ordinance that relates to the recordation of any instrument, paper, or notice that relates to real property, if the instrument, paper, or notice contains certain information, meets specified recording requirements, and is photographically reproducible.~~

~~This bill would require the county recorder to establish a property fraud prevention notification system that notifies a subscriber that a document has been recorded against the subscriber's property within 30 days after recordation. By requiring county recorders to establish property notification systems, the bill would impose a state-mandated local program.~~

~~This bill would authorize the county recorder to refuse to accept a financing statement, letter, paper, document, or other notice or demand that simulates a form of court or legal process if the document is not required or authorized to be filed or recorded by the laws of the state or the county recorder has reasonable cause to believe the document is materially false, fraudulent, or an attempt at a sham legal process, as defined. The bill would also authorize the county recorder to refuse to accept a financing statement in specified circumstances, including, but not limited to, if the financing statement has the same name listed as the debtor and secured party. The bill would provide that a county recorder is not liable for improperly refusing to accept a document for filing or recording and that a county recorder does not have a duty to inspect, evaluate, or investigate a document presented for filing or recording.~~

~~This bill would provide that the existence of a claim of a nonconsensual common law lien in the public record does not constitute a defect in the title of, or an encumbrance on, the real property described and does not affect the marketability of the title to the real property. The bill would provide that a county recorder is not liable for certain actions related to accepting or refusing to accept for recording or filing, or failing to disclose, a claim of a nonconsensual common law lien, and would provide that a county recorder is not required to defend his or her decision to accept or reject the document for filing, except as otherwise provided by law.~~

~~(3) This bill would provide that its provisions are severable.~~

~~(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes-no.
State-mandated local program: yes-no.~~

The people of the State of California do enact as follows:

1 SECTION 1. Section 765.010 of the Code of Civil Procedure
2 is repealed.

1 SEC. 2. Section 765.010 is added to the Code of Civil
2 Procedure, to read:

3 765.010. (a) For purposes of this section:

4 (1) “Harass” means engage in knowing and willful conduct that
5 ~~is intended to cause a person or entity financial or emotional~~
6 ~~distress, and that~~ serves no legitimate purpose.

7 (2) “Entity” includes both governmental and private entities.

8 (b) A person shall not file or record, or direct another to file or
9 record, a lawsuit, lien, or other encumbrance, including a notice
10 of lis pendens, against another person or entity knowing it is false,
11 with the intent to harass the person or entity or to influence or
12 hinder the person in discharging his or her official duties if the
13 person is a public officer or employee.

14 (c) (1) A person or entity whose property is subject to a lien or
15 encumbrance in violation of this section may petition the superior
16 court of the county in which the person or entity resides or in which
17 the property is located for an order, which may be granted ex parte,
18 directing the lien or other encumbrance claimant to appear at a
19 hearing before the court and show cause why the lien or other
20 encumbrance should not be stricken and other relief provided by
21 this article should not be granted.

22 (2) The court shall schedule the hearing no earlier than 14 days
23 after the date of the order. The scheduled date of the hearing shall
24 allow adequate time for notice of the hearing.

25 SEC. 3. Section 765.030 of the Code of Civil Procedure is
26 amended to read:

27 765.030. If the court determines that the lien or other
28 encumbrance is in violation of Section 765.010, the court shall
29 issue an order striking and releasing the lien or other encumbrance
30 and may award costs and reasonable ~~attorney~~ *attorney’s* fees to
31 the petitioner to be paid by the lien or other encumbrance claimant.
32 If the court determines that the lien or other encumbrance is valid,
33 the court shall issue an order so stating and may award costs and
34 reasonable ~~attorney~~ *attorney’s* fees to the encumbrance claimant
35 to be paid by the petitioner. The court may direct that such an order
36 shall be recorded.

37 SEC. 4. Section 765.040 of the Code of Civil Procedure is
38 amended to read:

39 765.040. Any lien or encumbrance claimant who records or
40 files, or directs another to record or file, a lawsuit, lien, or other

1 encumbrance in violation of Section 765.010 shall be liable to the
2 person subject to the lawsuit or the owner of the property bound
3 by the lien or other encumbrance for a civil penalty of up to five
4 thousand dollars (\$5,000).

5 SEC. 5. Section 765.060 of the Code of Civil Procedure is
6 amended to read:

7 765.060. If a lien or other encumbrance is recorded or filed
8 against a public officer or employee in violation of Section
9 765.010, the state or local agency that employs the public officer
10 or employee may provide counsel for the public officer or
11 employee in an action brought pursuant to that section.

12 SEC. 6. Section 6223 of the Government Code is repealed.

13 ~~SEC. 7. Section 27212 is added to the Government Code, to~~
14 ~~read:~~

15 ~~27212. (a) The county recorder shall establish a property fraud~~
16 ~~prevention notification system. The system shall notify a subscriber~~
17 ~~by mail, email, or telephone that a document has been recorded~~
18 ~~against the subscriber's property within 30 days after recordation.~~

19 ~~(b) For each property that an individual, business, or other entity~~
20 ~~subscribes to receive a notification for, as described in subdivision~~
21 ~~(a), the county recorder may charge a fee in an amount that does~~
22 ~~not exceed five dollars (\$5). An employee of the federal~~
23 ~~government, the state, or a county or municipality within the state~~
24 ~~shall not be charged a subscription fee.~~

25 ~~SEC. 8. Section 27282.5 is added to the Government Code, to~~
26 ~~read:~~

27 ~~27282.5. (a) Notwithstanding any other law, a county recorder~~
28 ~~may refuse to accept a financing statement, letter, paper, document,~~
29 ~~or other notice or demand that simulates a form of court or legal~~
30 ~~process in either of the following circumstances:~~

31 ~~(1) The document is not required or authorized to be filed or~~
32 ~~recorded by the laws of the state.~~

33 ~~(2) The county recorder has reasonable cause to believe the~~
34 ~~document is materially false, fraudulent, or an attempt at a sham~~
35 ~~legal process. As used in this section, "sham legal process" means~~
36 ~~the issuance, display, delivery, distribution, reliance on as lawful~~
37 ~~authority, or other use of an instrument that is not lawfully issued,~~
38 ~~whether or not the instrument is produced for inspection or actually~~
39 ~~exists, which purports to be any one of the following:~~

1 ~~(A) A summons, subpoena, judgment, lien, arrest warrant, search~~
2 ~~warrant, or other order of a court of this state, a peace officer, or~~
3 ~~a legislative, executive, or administrative agency established under~~
4 ~~the laws of this state.~~

5 ~~(B) An assertion of jurisdiction or authority over, or a~~
6 ~~determination or adjudication of, the legal or equitable status,~~
7 ~~rights, duties, powers, or privileges of a person or in relation to~~
8 ~~property.~~

9 ~~(C) A requirement or authorization for the search, seizure,~~
10 ~~indictment, arrest, trial, or sentencing of a person or in relation to~~
11 ~~property.~~

12 ~~(b) In addition to subdivision (a), the county recorder may refuse~~
13 ~~to accept a financing statement in any of the following~~
14 ~~circumstances:~~

15 ~~(1) The financing statement lists the same name as debtor and~~
16 ~~secured party.~~

17 ~~(2) The financing statement identifies an individual debtor as a~~
18 ~~transmitting utility.~~

19 ~~(3) The financing statement is determined to be intended for an~~
20 ~~improper purpose such as hindering, harassing, or wrongfully~~
21 ~~interfering with another person or entity.~~

22 ~~(4) The financing statement is offered for filing in either of the~~
23 ~~following circumstances:~~

24 ~~(A) Without the consent or participation of the obligor named~~
25 ~~in the financing statement, the debtor named in the financing~~
26 ~~statement, and the owner of the collateral described or indicated~~
27 ~~in the financing statement.~~

28 ~~(B) With the consent of an agent, fiduciary, or representative~~
29 ~~of the secured party of record but without the consent of the secured~~
30 ~~party.~~

31 ~~(5) The financing statement is forged.~~

32 ~~(c) A county recorder does not have a duty to inspect, evaluate,~~
33 ~~or investigate a document presented for filing or recording.~~

34 ~~(d) A county recorder does not have a duty to accept for filing~~
35 ~~or recording a claim or lien unless the document is authorized by~~
36 ~~statute or imposed by a court having jurisdiction over the property~~
37 ~~affected by the document.~~

38 ~~(e) A county recorder that improperly refuses to accept for filing~~
39 ~~or recording a document pursuant to this section is not liable for~~

1 damages, personally or in his or her official capacity, for
2 improperly refusing to accept the document for filing or recording.

3 SEC. 9. ~~Section 27292 is added to the Government Code, to~~
4 ~~read:~~

5 27292. (a) ~~The existence of a claim of a nonconsensual~~
6 ~~common law lien in the public record does not constitute a defect~~
7 ~~in the title of, or an encumbrance on, the real property described~~
8 ~~and does not affect the marketability of the title to the real property.~~

9 (b) ~~A county recorder is not liable, personally or in his or her~~
10 ~~official capacity, in either of the following circumstances:~~

11 (1) ~~Accepting for recording or filing a claim of a nonconsensual~~
12 ~~common law lien, or accepting for filing a notice of an invalid~~
13 ~~nonconsensual common law lien.~~

14 (2) ~~Refusing to record or file, or failing to disclose, a claim of~~
15 ~~a nonconsensual common law lien.~~

16 (c) ~~Except as otherwise provided by law, a county recorder is~~
17 ~~not required to defend a decision to accept or reject a document~~
18 ~~pursuant to this section.~~

19 SEC. 10. ~~The provisions of this act are severable. If any~~
20 ~~provision of this act or its application is held invalid, that invalidity~~
21 ~~shall not affect other provisions or applications that can be given~~
22 ~~effect without the invalid provision or application.~~

23 SEC. 11. ~~If the Commission on State Mandates determines~~
24 ~~that this act contains costs mandated by the state, reimbursement~~
25 ~~to local agencies and school districts for those costs shall be made~~
26 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
27 ~~4 of Title 2 of the Government Code.~~